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THE CASE OF THE MONOPOLIES—SOME OF ITS RESULTS AND SUGGESTIONS

APPARENTLY the monopolistic idea is as old as the history of man. That great and good man, Job, may be counted as the earliest recorded "trust-buster,"[1] if we read between the lines of his story, and Solomon said,[2] "He that withholdeth corn, the people shall curse him; but blessing shall be upon the head of him that selleth it."

Doubtless, by exhaustive search, we could find some record of attempts to monopolize during each century from Biblical days to the time of printing, and as surely there must have been a counter-movement.

But not until the last five hundred years of English history have the *pros* and *cons* crystallized in such a way as to be of intelligent use to us. In legal records, the "Case of the Monopolies" is the first meeting, head-on and with a clear field, of the monopolists and anti-monopolists, and it therefore seems worthy of close scrutiny. If we uncover the reasons for this particular quarrel we shall find something like this:

MONOPOLY.

I.

In the early days of England, kings, like common folk, often were in straits for money. In olden times, when the "divine right" was part of the religion of the nation, a short cut to relief for the empty

[1] Job, 29.

[2] Proverbs, 11:26. See also Genesis, chap. XLVII, for an account of Pharaoh's monopoly.

purse was found by a war of conquest. If the ruler were not powerful enough for this he resorted to petty measures, confiscating the property of his wealthier subjects on trumped-up charges of treason, or by levying taxes.

But by the latter part of the reign of Elizabeth the people had become a power. Whether the crown wished or not, they had to be consulted in matters of taxation. Parliament, too, had some say about attainders for treason, and confiscation. The old short cuts were shut off; new expedients must be found, therefore, for helping the treasury.

Whatever else may be said of the ancestors of our nation we must admire the way the lawyers met any emergency which arose. Some poor bailiff ran off with the funds of his lord,—instead of sighing for the sweet old days when he might have chased him with bloodhounds and have strung him up when caught, the good baron who was robbed took himself to the law—a new remedy must be devised, and lo, the writ of *capias* was born. Again, a cleric declined to give up a fat living. He was not clapped in a town jail, or taken to the tower and branded. Those methods had gone out of fashion. The law must rule—if it did not reach the case, stretch it a little and devise a new writ. So the clerics became responsible for the writ of *quo warranto*. The remedies sprang full-armed from the courts, fathered by the inventive genius of the old English bar.

So to some shrewd counsellor of the earlier days must be attributed the idea of formally granting special privileges to favored mortals as a means of revenue to the crown or as a reward for services rendered. These grants grew until they became in most cases monopolies, and were in fact styled "monopolies" or "purveyances." The scheme was a ready and easy makeshift, to enable the sovereign to obtain coin when needed.

The practice reached its climax while Elizabeth was in power. A list of her grants includes patents giving the sole rights to sell or manufacture currants, salt, iron, powder, cards, calf-skins, fells, pouldavies, ox-shin bones, train-oil, lists of cloth, potashes, aniseseed, vinegar, sea-coals, steel, aqua-vitæ, brushes, pots, salt-petre, bottles, lead, accidences, oil, calamine-stone, oil-of-blubber, glasses, paper, starch, tin, sulphur, new drapery, dried pilchards, beer, horn, leather, Irish yarn, importation of Spanish wool, and transportation of iron-ordinance.[3]

[3] To golf enthusiasts this may be of interest.

On June 26th, 1626, William and Thomas Dickson, makers of "gowffe" balls in Leith, complained to the Privy Council that James Melville, quarter master of Lord Morton's regiment, pretends that he had a gift from James VI for excluding a certain import on

These monopolists were less merciful than their successors of today, as it is noted that they raised the price of salt from sixteen pence a bushel to fourteen or fifteen shillings.[4]

The Virgin Queen also distinguished herself by chartering the East India Company, then called the "Governor and Company of London trading to the East Indies," which was a fine pattern of monopoly.[5] This was in the last year of the sixteenth century and before the nation had expressed any formally pronounced disapproval of the grants.

But the fruit which was sweet to the favored few was bitter to the taste of the many. In 1597 unsuccessful protests had been made in Parliament, and in 1601 a list of monopolies was made out and it was proposed to abolish them by law. Sharp discussion followed: Francis Bacon took the side of the royal prerogative, and Sergeant Heyle asserted that the queen could take what she pleased from the subject of her regal right.[6] The discontent of the people nerved the Parliamentary opponents of the grants, however, and they stood firm.

As Macaulay says (Vol. I, p. 49, of his History of England), "It was in 1601 that the opposition which had, during forty years, been silently gathering and husbanding strength, fought its first great battle and won its first victory. The ground was well chosen. The English sovereigns had always been intrusted with the supreme direction of commercial police. It was their undoubted prerogative to regulate coin, weights and measures, and to appoint fairs, markets and ports. The line which bounded their authority over trade had, as usual, been but loosely drawn. They therefore, as usual, encroached on the province which rightfully belonged to the legislature. The

golf balls and for exacting "an import off every gowffe ball made within this kingdom; which their lordships had never ratified—on Feb. 20th, Melville sent "lawless soldiours" who took from Dickson's house a great number of "gowffe balls," which they had made for his majesty's use.

Dicksons were fined five pounds, and one hundred pounds,—"caution,"—

See "Sphere," Feb. 22, 1902. "Privy Council of Scotland."

[4] Hume's History of England, Vol. IV, p. 209; some of the things named are strange to us: pouldavies, a coarse canvas; calamine-stone, a kind of zinc-silicate; pilchards, a small herring-like fish.

[5] For a graphic introduction to the possibilities of this company see Macaulay's History of England, Vol. IV, p. 104, *et seq.* Sir Josiah Child's career is a curious parallel of many a self-made man's rise in our contemporary "Trusts." The charter for the company was granted in 1599, and its rights were practically unchallenged for nearly a century. It is noteworthy, too, that under Elizabeth were ratified letters patent granted by Henry VIII in 1534 to the University of Cambridge licensing it to appoint three printers to print and sell all books approved by the Chancellor and three Doctors. This was a monopoly limited geographically, but is interesting as a forerunner of the famous "Stationers' Company," which so long held all writers in its strong grasp. See Birrell's "Law and History of Copyright," p. 56.

[6] See Skottowe's "Short History of the English Parliament," p. 54.

encroachment was, as usual, patiently borne, till it became serious. But at length the queen took upon herself to grant patents of monopoly by scores. Iron, oil, vinegar, coal, etc., etc., could be bought only at exorbitant prices. The House of Commons met in an angry and determined mood. There seemed for a moment some danger that the long and glorious reign of Elizabeth would have a shameful and disastrous end. She, however, with admirable judgment and temper, declined the contest, put herself at the head of the reforms, redressed the grievance, thanked the Commons," etc., etc.

This was a popular triumph but was comparatively barren of results. A great number of the hated gifts of the crown still remained in force. It seemed to many that they had been tricked and the spirit of discontent was not downed.[7] Encouraged by the strength shown in Parliament a case was pressed to test the legality of the grants. That was the famous *Case of the Monopolies,* reported in XI Coke, page 85, under the title of *Darcy* v. *Allein,* and decided in 1602, 44th Elizabeth. The plaintiff was a groom of the queen's privy chamber; the defendant a haberdasher in London. The action was on the case for damages and was based on a patent given the plaintiff by Queen Elizabeth. From the brief synopsis given by Coke, it seems that this patent had been preceded by another to one Bowes, giving the same powers, in practically the same terms and privileges: in the recital of Bowes' patent, no mention is made of any money returned to the crown, but in Darcy's an annual payment of one hundred marks is required, and Darcy's is for twenty-one years while Bowes' was for twelve, but in the main they are identical.

Under this patent the patentee was exclusively empowered to import or manufacture playing cards and to sell them in the realm. No one else should assume these rights "upon pain of the Queen's highest displeasure, and of such fine and punishment as offenders in the case of voluntary contempt deserve." A good reason for the "displeasure" is set forth in the artful preamble of the declaration. Coke, who had been made Attorney-General over so strong a candidate as Bacon some years before, appeared for the plaintiff, and it seems as though his skillful hand had probably framed the pleading.

[7] Campbell's "Puritan in Holland, England and America," Vol. II, p. 175. Green says that all obnoxious grants were cancelled,—"she (the queen) acted with her usual ability, declared her previous ignorance of the existence of the evil, thanked the House for its interference, and quashed at a single blow every monopoly that she had granted." "Short History of the English People," Vol. II, p. 813. Either this statement is wrong or else some of the grants were speedily renewed. Green (Vol. III, p. 1072) says they were revived under Charles I, but it would seem that some of them not only had been spared by Elizabeth but had actually struggled through the Act of Parliament passed under James I to officially extinguish them.

It recites that the Queen "intending that her subjects being able men to exercise husbandry, should apply themselves thereunto, and that they should not employ themselves in making playing cards, which had not been an ancient manual occupation within this realm, and that by making such a multitude of cards, card-playing was becoming more frequent, and especially among servants and apprentices, and poor artificers; and to the end her subjects might employ themselves to more lawful and necessary trades, by her letters patent" granted, etc.

It was thus introduced to the court not as a monopoly meant to make money from those of moderate means seeking some pleasure in an age of few pastimes, but as a healthful police-measure, protecting the general morals. Under the patent the price of the cards was so high[8] that they would be beyond the reach of any except the very wealthy whose morals were either beyond reproach or past repair, so that cards could do no hurt in either case.

The defendant pleaded "not guilty" except as to one-half gross—as to that half gross he claimed that he belonged to the society or guild of Haberdashers of the "ancient city" of London, and as a citizen and member of that society, ancient and time-honored usage guaranteed him the right to buy and sell freely any merchandise.

We may assume that the proof sustained the pleadings. The points against the grant, Coke sets out in such detail that it arouses some suspicion that he liked that side the better. Among the counsel in the case we find Coke, Attorney-General, upholding the grant, and against it Altham, afterward Baron of the Exchequer, and Tanfield, afterward Lord Chief Baron of the Exchequer. The arguments are in part set forth in the reports as follows:

It was claimed the grant "of sole making of playing cards" was good for three reasons.

1. "Because the said playing cards were not any Merchandise or Thing concerning Trade of any necessary Use, but Things of Vanity and the Occasion of loss of Time, and Decrease of the Substance of many, the Loss of the Service and Work of Servants, Causes of Want, which is the Mother of Wo and Destruction, and therefore it belongs to the Queen to take away the great Abuse, and to take Order for the moderate and convenient Use of them.

2. In Matters of Recreation and Pleasure the Queen has a

[8] 400 gross (or 57,600 cards) cost 5,000 pounds, or more than a shilling each.

This grant covered all kinds of cards. Some were very elaborate. Prince Eugene had a pack made of ivory which he is said to have carried through his campaigns,—and an interesting set is now in the Bodleian Library at Oxford, giving scenes from the life of Dr. Sacheverel, whose sensational career is described in McCarthy's "Queen Anne."

Prerogative given her by the Law to take such Order for such Moderate Use of them as seems good to her.

3. The Queen, in regard of the great abuse of them, and of the Cheat put upon her Subjects by Reason of them, might utterly suppress them and by Consequence without Injury done to any one, might moderate and tolerate them at her Pleasure. And the reason of the Law which gives the King these Prerogatives in Matters of Recreation and Pleasure was, because the greatest Part of Mankind are inclinable to exceed in them."

As to the first it was argued to the contrary by the Defendant's Counsel that this grant was void for two reasons. 1,—that it is a monopoly and against the Common Law. 2,—that it is against divers acts of Parliament.

It is against Common Law for four reasons.

1. "All Trades, as well Mechanical as others, which prevent Idleness (the Bane of the Commonwealth) and exercise Men and Youth in Labour, for the Maintenance of themselves and their Families and for the Increase of their Substance to serve the Queen when Occasion shall require are profitable for the Commonwealth," therefore the grant to the plaintiff to have the sole making is against the common law and the benefit and liberty of the subject.

Counsel cites "a case adjudged in this court" *inter Davenant & Hurdis* (41 Eliz.),—which case was "That the Company of Merchant Taylors in London, having power by charter to make Ordinances for the better Rule and Government of the Company,—made an Ordinance that every Brother of the same Society, who should put any Cloth to be dressed by any clothesworker, not being a Brother of the same Society, should put one-half his cloths to some Brother of the same Society, who exercised the Art of clothesworker, upon Pain of forfeiting ten shillings," and it was adjudged that that ordinance, though made under the charter, was against the Common Law because against the liberty of the subject, as every man has the right to put his cloth to be dressed by whatever clothesmaker he pleases, and can't be restrained to certain persons, as that in effect would be a monopoly.

2. "The sole Trade of any Mechanical Artifice or any other Monopoly, is not only a Damage and Prejudice to those who exercise the same Trade, but also to all other Subjects,"—because it is natural that three bad things will happen, to-wit, (a) the price will be raised, (b) the commodity will not be so good, (c) it will tend to the impoverishment of others formerly in the same trade, but now prevented from exercising it.

3. The Queen was deceived in her grant for, as appears from the preamble, it was intended for the Weal Publick, and will be employed only for Private Gain.

4. It is a dangerous innovation, "as well without any President or Example as without authority of Law or Reason." It is for twelve years to plaintiff so that his executors, wife or children, or others inexpert in the art will have this monopoly, and it can't be intended that Edward Darcy, "a groom of the Queen's Privy Chamber, has any skill in this Mechanical Trade of making of Cards."

While playing cards is a vanity, if it is abused, still the making of them is neither a vanity nor a pleasure, but labor and pains.

It was resolved that the Queen could not suppress the making of cards within the realm any more than the making of Dice, Bowls, Balls, etc., which are works of labor and art, altho' they serve for pleasure, recreation and pastime and can't be suppressed except by Parliament, nor a man restrain from any trade except by Parliament.

This opinion was handed down in 1602, when Shakespeare was superintending the first production of the "Merry Wives of Windsor" and incidentally buying a farm near Stratford to serve as a country-place and a pastime. It would be interesting to know whether or not he regarded the result of the case as a threatening victory for the guilds,[9] the trades unions of his time.

A short time afterward Elizabeth died, and in 1604 James came into power, possessed of the belief in the absolute divinity of Kings.[10] At first he was not bothered in this belief, but in 1608 friction between him and the Commons resulted in the suppression by Parliament of a book (by Cowell) which declared "the King is above the law by his absolute power", and in 1610 he made a proclamation about "Monopolies." His lavishness drove him to extremes, however, and he again granted monopolies. The judges, with the single exception of Coke (characterized by Green III, 997, as "a

[9] GUILDS.

For an interesting enumeration and description of these fore-runners of trades-unions see the life of Sir Richard Whittington by Besant and Rice (Putnam's Ed. 1881, p. 70), which shows that they existed even before the Norman Conquest, and were very powerful as early as the fourteenth century. In the reign of Edward III we find the first threat of "department stores" in the plan of the Company of Grossers, a fraternity of wholesale merchants who proposed to sell everything themselves instead of through retail dealers. This was stopped by a command of the King, that each should confine himself to one craft, or "mystery." In the year 1355 the following companies are listed:

Brasiers, Sporiers, Tanners, Butchers, Grossers, Poulterers, Curriers, Bowyers, Ironmongers, Chandlers, Pewterers, Tailors, Wax-Chandlers, Pouchmakers, Skinners, Leather-Dressers, Salters, Cutlers, Fishmongers, Mercers, Girdlers, Cappers, Brewers, Vintners, Prossers in the Ropery, Glovers, Armourers, Goldsmiths, Drapers.

[10] Green's "Short History of the English People," III, p. 976.

narrow-minded and bitter man, but of the highest eminence as a lawyer") were terrorized by the crown, and no attempt was made to invoke the law to abridge the crown. Coke, who is here found on the side of the question next his heart, was dismissed from office because he failed to yield to the King's pleasure, and became a leader of the opposition. Green says "The most crying constitutional grievance arose from the revival of monopolies, in spite of the pledge of Elizabeth to suppress them."[11]

In 1610 the business which chiefly occupied the commons during their session was the abolition of wardships and purveyance,—prerogatives which had been, more or less, touched on every session during the whole reign of James.[12] This time the Commons offered the King a settled revenue for the powers he was to forego. He wanted 200,000 pounds a year, which they agreed to confer upon him. They didn't raise the funds, however—why is unknown, as the journals of this session are lost.

To quote again from Macaulay:[13]

"The discontents which Elizabethan wisdom had appeased were revived by the dishonest and pusillanimous policy which her successor called Kingcraft. He readily granted oppressive patents of monopoly. When he needed the help of his Parliament he as readily annulled them. At length the excellent House of Commons which met in 1623 determined to apply a strong remedy to the evil. The King was forced to give assent to a law which declared monopolies established by royal authority to be null and void. Some exceptions were made and unfortunately were not clearly defined. It was especially provided that every Society of Merchants which had been instituted for the purpose of carrying on trade should retain all its legal privileges. The question whether a monopoly granted to such a company were or were not a legal privilege was left unsettled and continued to exercise the ingenuity of lawyers."[14]

While the Parliaments were enacting statutes the courts do not

[11] III Short History, 1008.

[12] III Hume, p. 269.

[13] History of England, IV, p. 103.

[14] Of these companies the most important was that incorporated on the last day of the sixteenth century under title of "Company of Merchants of London trading to the East Indies."

In 1681 five persons had a sixth and fourteen persons a third of the votes in that company. Stock was up to 500 pounds. One man, Sir Josiah Child, had 20,000 pounds per annum, an amount with a huge purchasing power as compared with like figures today. Child became a great favorite at court, was "governor" of the company and gave presents of 10,000 pounds each to Charles II and James. He was a judicious administrator, and had his connections with the court well established, but the revolution spoiled his plans. The Commons censured some of his acts in 1690 (2 W. & M.) and referred future relations to a committee.

seem to have questioned the doctrine of *Darcy* v. *Allein* for some time after. The abuse attacked in that case raised its head again,[15] as Macaulay notes, and grew so bold that in 1623 a law was passed (found in Cap. III, 21 Jac.). This law was probably framed by Coke, who was then out of favor with the crown and had become one of the leaders of the Commons. One can't help wondering whether he would then have repeated the inscription on the fly-leaf of his reports published in the thirteenth year of James, whom he styles "the Fountain of all Piety and Justice and the Life of the Law." Of this act the preamble is so firm in tone, although moderate in expression, that it deserves a moment. It reads thus: "Forasmuch as your most excellent Majesty, in your royal judgment, and of your blessed disposition to the weal and quiet of your subjects, did in the year of our Lord God 1610 publish in print to the whole realm, and to all posterity, That all grants and monopolies * * * are contrary to your Majesty's laws, which your Majesty's declaration is truly consonant and agreeable to the ancient and fundamental laws of this your realm: And whereas your Majesty was graciously pleased expressly to command that no suitor should presume to move your Majesty for matters of that nature; yet nevertheless upon misinformations, and untrue pretences of publick good many such grants have been unduly obtained, and unlawfully put in execution, to the great grievance and inconvenience of your Majesty's subjects contrary to the laws of this your realm, and contrary to your Majesty's most royal and blessed intention so published as aforesaid." For avoiding whereof "be it enacted that all monopolies are altogether contrary to the laws of this realm and are and shall be void and of no effect."

This act further provides that all such monopolies shall be tried and determined according to the common laws of the realm, and not otherwise, and gives treble damages to any party aggrieved. Of course patents for new inventions are saved from the operation of the act.

For some time after the enactment of this statute of James in 1623 the times were so troublous that little attention was paid to the validity or frailty of monopolistic grants by the courts. Charles I, Cromwell and the Commonwealth, and Charles II kept the public mind agitated on the questions of succession and with civil war. There were at least two cases brought involving the validity of

[15] On July 20th, 1620, the King gave a patent to Sir Thomas Roe and partners for the sole sealing, importing, engrossing and sale of tobacco. This was complained against by the Virginia Company. Also the King attempted to give a monopoly of Virginia coast fishing to Sir F. Joyes, but was prevented by the Privy Council, after a hearing. See "The First Republic in America" (p. 386, *et seq.*), by Alexander Brown.

charters to merchant companies, but neither seems to have been decided in definite form.

One of these was an action of trespass and was brought in King's Bench (in the case of *Horne* v. *Ivy*, 21 Car. II, 1669)[16] for taking away a ship. The defendant justified under the "Canary Company" patent, providing that none but such and such trade thither and claiming he acted under authority from the patentees, and seized the ship as it was unlawfully trading.[17] Serjeant Pollexfen, for the plaintiff in trespass, argued that the patent was void because it undertook to give forfeiture of goods and imprisonment, which cannot be by patent. The court said it desired to be satisfied whether this was a monopoly or not, and ordered it to be argued—no note of the decision or the argument is made in the report.

In the case of the *Company of Merchants Adventurers* v. *Rebow*,[18] the question is raised as to the validity of the patent given by Elizabeth to the plaintiff organization. The defendant is accused, in an action on the case, of trading in prohibited places,—that is, prohibited to all except the select company. Mr. Pollexfen contended that the patent was clearly void,—"all engrossing and monopolizing are void for the common law, the one is a species of the other." He makes the rather humorous statement that the East India case (which apparently had been argued in the lower courts) is not like this because that grant prohibited trading with infidels while this (at bar) restrains trading with Christians in Holland, Zealand, etc., etc. The reporter does not chronicle the decision.

With William and Mary came national quiet, and again we find a disposition to deal firmly with the monopoly question.

This time it comes up in new guise. Under a statute, an action on the case was brought in admiralty,[19] one *Sands* v. *Sir Josiah Child, Franklin and Leach,* to recover damages because the plaintiff was not permitted to go from the Port of London on December 13, with the ship called "The Commerce of London," being in his possession, 'loaden with merchandizes partly his own, partly of divers other merchants' to trade for them, he to have a fifth part of the profits. On that 13th day of December, 1683, the defendants prosecuted a suit in the Admiralty for the stay of the ship, until security should be given that it should not go to 'trade with infidels' within the limits of the charter of the East India Company; by this

[16] 1 Modern, p. 18.

[17] The Dutch found the monopolies granted the West India Company were stifling their colonies, so in 1638 all the most important ones in New Netherlands were abolished. See Fiske's "Dutch and Quaker Colonies," Vol. I, p. 170.

[18] 3 Jac. II, 1687; 3 Modern, 131.

[19] 3 Levinz, 352.

suit the ship was detained sixteen months, so that plaintiff lost the profits of his voyage. For this loss plaintiff sues here. The plea was not guilty (it was a qui tam action); on the trial one of the defendants (Franklin) was found not guilty, but as to Sir Josiah Child and Leach a special verdict was returned to the effect that they acted under the charter of the East India Company which gave this company the sole right to trade with infidels in the East Indies, under penalty of the forfeiture of ship and goods,—that the plaintiff and others had fitted out the ship for the purpose of so trading,—that Child, governor of the company, and Leach, its solicitors, petitioned the King in council for a stay of the ship and an order in admiralty issued for such a stay, and admiralty process followed in course, staying the vessel and losing the voyage. The verdict further found "if guilty, damages for the plaintiff *in duplo* 1500 pounds and costs." Judgment was rendered for the plaintiff—defendants bring error. It was argued among other things, that this was no monopoly but only a 'prohibition to traffick with Infidels, which the King may well do, they being perpetual enemies.' To this it was replied that the King has power to grant embargoes in time of danger, but this was not such a case, but only an attempt to prevent trade within the limits of the East India Company grant. Further, 'royalty should not interfere because there was a remedy in the courts—further as to prohibiting traffic with infidels if no commerce should be held with them they will never be converted, and it is a disparagement to the Christian Religion to think they should rather be converted by infidels than that infidels should be converted by them, which argument is only a pretence anyway, for the restraint is only as to infidels within the limits of the East India Company.' The reporter adds that there was not much doubt upon any of the matters moved except whether this was properly brought in admiralty. Lord Holt first queried as to the jurisdiction, but afterwards concluded the action was properly brought. We may note that the change of administration militated against Childs and his company and undoubtedly affected the decision. The ship was stopped under Charles II—the action for damages for the stopping was decided in the fifth year of William and Mary.

The next case of any particular import on the question of monopolies was heard in 1712,[20] where a point of law was submitted to the King's Bench by the court of chancery,—"Whether the grant of the crown, to the company of Stationers to have the sole printing of 'almanacks,' provided they were licensed by the Archbishop of

[20] 10 Modern, 105.

Canterbury and the Bishop of London, were a good grant; or void, because against the liberty of the subjects."[21] Against the patent it was argued that printing was a handicraft trade and no more to be restrained than other trades.

For the patent it was argued that the crown had a peculiar interest in the book of common prayer and consequently in the calendar, which is part of it. Further that printing was an art introduced by the crown, and therefore subject to a special property. Also printing is always an exception and subject to kingly regulation because of the inconvenience to the public through any mismanagement of the printing press. The Court reserved its decision.

II.

From the foregoing we have noted some of the general causes leading up to the case of the monopolies, and the ebb and flow thereafter of public and judicial opinion relating to men's attempts in England to get the sole control of one or another product or trade. This case stands as the first strong and fearless statement by the courts of the law as men had long felt it ought to be. Parliament had enacted statutes before the controversy of Allein and Darcy, but the enactments had been dead letters. Not until the court gave its opinion in this case did the people feel that laws of restriction might be effective.

To this decision, then, we may rightly look as the cause of James' unwilling law against monopolies, a great step forward in popular rights,—to it must be attributed, too, the abrogation of the charters of the East India Company and the Canary Company, and the modification of the law as to engrossing, forestalling, and 'corners' generally.[22]

We come to the beginning of the nineteenth century, therefore, with the rule pretty well fixed that monopolies are unlawful, and that *corners* are reprehensible but not necessarily illegal.

The statutes against the latter have been repealed by the law

[21] See Birrell, "Law and History of Copyright," p. 55: The "King's Books," the printing of which he controlled, included (a) Acts of Parliament and their abridgements; (b) All books of rites and services of the resettled Church of England; (c) Bibles and Testaments; (d) Law Books and Year Books; (e) Almanacks; (f) Ed. works, Latin grammars. The first appointment of King's printer was in 1547, by Edward VI.

[22] Engrossing: Purchasing large quantities of a commodity in order to command the market and sell at high prices.

Forestalling: Buying victuals on their way to market (before they reach it) so as to sell again at higher prices.

Regrating: Enhancing, or seeking to enhance, price of victuals by any means.

passed in 1772 (12 George III Cap. 7), but the set of the courts is against extremes.[23]

The first year of the new century (A. D. 1800) brings an interesting development of the underlying idea in the case of *King* v. *Waddington*.[24] This was a criminal action on an information charging the defendant with two offences,—1st, buying up large quantities of hops with the intention of re-selling them at unreasonable profit,—2nd, spreading rumors of the scarcity of hops with the purpose of causing others owning hops to withhold them from the market and of enhancing the price by such tactics.

One of the defenses urged was that no offense had been committed because hops are not 'a victual,' hence not subject to engrossing—the reply was that this had been settled by 9 Anne, c. 12, s. 24, which made hops a necessary ingredient of beer, and therefore a victual. Lord Kenyon in a long and interesting opinion holds that the defendant had committed an offense at common law,—the repeal of the statutes not having affected the common law as bearing on this subject,—and the defendant was sentenced to pay a fine of 500 pounds and be imprisoned one month. On an indictment he was also adjudged guilty and mulcted another 500 pounds, and sentenced to three months additional. This is not a bad precedent for us to follow in dealing with the authors of some roorbacks today.

With the improved method of communication, however (due to steam and to the growth of population), it soon became apparent that larger combinations of effort would be necessary. Larger undertakings came,—among them the first gas company, organized in London 1810,—and no one man could provide financial means; it was also plain that some of the narrowing results of the older laws and decisions were obsolete. Hence we soon find a modification, by the courts, of the harsher rules.

In 1825, Chief Justice Best held, in *Homer* v. *Ashford*,[25] that an agreement was good that prevented an employer from embarking for himself and soliciting patronage in certain districts, although it would have been bad if applied to the whole kingdom.

In 1844, came the act of Victoria doing away with all offenses of forestalling, engrossing and regrating.

[23] So far as one may judge from reading the statutes, it seems that the fear of monopoly of one kind or another was often present. In 1552 we have the act against engrossers (5th and 6th, Edward VI): in 1623 the law against monopolies as finally forced upon James I; in 1778 (28 George III, Cap. 53, Sec. 2), a statute providing that a combination of five or more for the purpose of purchasing and selling coals shall be unlawful and punishable by indictment. But in 1772 (12 George III, Cap. 70) it was found that some of the dreaded monsters were not formidable, and the statute law was modified by an attempted repeal of the 5th and 6th Edward VI.

[24] 1 East 143.

[25] 3 Bingham 327.

In 1889, the climax was capped by the decision in the case of *Mogul Steamship Company* v. *McGregor et al.*[26] This was an action for damages because of a conspiracy to prevent plaintiffs from carrying on trade between London and China. Plaintiffs were ship-owners and defendants were a body of other ship-owners who had associated themselves for the purpose of keeping up freight rates in the tea trade between China and Europe, and securing that trade to themselves by allowing a rebate of five per cent on all freights paid by shippers who shipped tea in the association vessels. To get this rebate shippers were required to sign a declaration that they have not made nor been interested in shipments by others than lines associated. Defendants sent a circular to merchants in the China trade saying that shipments by certain specified steamers owned by the plaintiffs, and other non-associated boats would bar the shippers from association rebates for six months.

It further seems that the defendants agreed to send steamers to underbid any independents who made stray trips to get cargoes, with the immediate object of driving these independent and non-associated competitors out of business. Plaintiffs did send to Hankow to contract for business, and defendants ran the freights down to 25 pounds whereas the normal rate was 50 pounds or more. Plaintiffs sued for the consequent damage. In the lower court Lord Coleridge found for the defendants.[27] The citation here is the appealed case. Lord Esher (M. R.) thought the plaintiffs entitled to recover, but was overruled by Justices Bowen and Fry, who held for the defendants. The opinion of Justice Bowen is often quoted; he holds broadly that one man has a full right to compete with another in trade,—that what is right for one man to do cannot be wrong for an association of men, and that there is therefore no conspiracy here. This decision is against the whole spirit of the English law, as it encourages the concentration of power and sole control. In this country we can hardly follow it in its reasoning. It suggests a radical departure from the underlying doctrine of the case of the Monopolies,—but it seems that the court was misled and that the decision will hardly take a permanent place as an authority. The case of *Nordenfelt* v. *Maxim Nordenfelt Guns & Ammunition Co.*,[28] is often cited as upholding the same rule, but it is not based on the same principle nor do others since go the full length of the Mogul Co. case.

[26] 23 Q. B. D. 598.

[27] Lord Coleridge found that the combination came within the limit of "reasonable and legitimate selfishness." His opinion is commended for its English. See Life of Lord Coleridge, II, p. 358.

[28] Decided 1894, App. Cases 535,

III.

The early days of the United States were too full of struggle to invite much litigation bearing on monopolies, or much discovered attempt to establish any.

It is true we find that some of the States in the earlier half of the last century adopted constitutions with clauses forbidding all monopolistic combinations, but it is only within the last twenty-five years that popular feeling on this continent has been gradually arousing. This is shown by the laws which have been enacted by the legislatures during that period and the constitutions more recently adopted. These statutory and constitutional provisions have been enacted independently and with reference to local conditions, and it may be interesting for a few moments to run over some of them.

The constitution of Arkansas (adopted in 1874) provides that, Article II, Sec. 2, "perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed."

In the case of *Ex-parte Levy*,[29] which arose under this provision, Judge Eakin in his opinion goes back to the time of Elizabeth for the root of the evil and says, "The monopolies which in England became so odious as to excite general opposition and infuse a detestation which has been transmitted to the free states of America, were in the nature of exclusive privileges of trade granted to favorites or purchasers from the crown, for the enrichment of individuals, at the cost of the public. The memory and historical traditions of abuses resulting from this practice, have left the impression that they are dangerous to liberty, and it is this kind of monopoly against which the constitutional provision is directed."

In California the constitution (Art. I, Sec. 21) provides,—"No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislature, nor shall any citizen, or class of citizens, be granted privileges, or immunities which, upon the same terms, shall not be granted to all citizens."

In Connecticut, which was one of the most progressive and hard-headed of our early states, there is no constitutional limitation but it was held (in the case of *Norwich Gas Light Co.* v. *Norwich City Gas Co.*[30] that "The statute of 21 James I, c. 3, which declares monopolies void, is merely declaratory of the common law." And further "A legislative grant of a monopoly would be void as being contrary to the theory of free government, therefore the legislature

[29] 43 Ark. 42.
[30] 25 Conn. 38.

cannot grant to any private corporation the exclusive right to lay down gas pipes in the city.[31]

In Georgia there is this constitutional provision, Art. IV, Sec. 2, Par. 4,

"The general assembly of this state shall have no power to authorize any corporation to buy shares of stock in any other corporation in this state or elsewhere, or to make any contract or agreement whatever, with any such corporation which may have the effect, or be intended to have the effect, to defeat or lessen competition in their respective businesses, or to encourage monopoly; and all such contracts and agreements shall be illegal and void."

The Organic Act of Hawaii (adopted April 30, 1900, 2 Supp. R. S. 1141) says at Sec. 55,—

"The legislature shall not grant to any corporation, association or individual any special or exclusive privilege, immunity or franchise without the approval of congress."

In Indiana a statute of 1901 (Sec. 3312 G. et. seq.) forbids any arrangement between persons or corporations to lessen, or tend to lessen competition in trade, or to tend to control the price of any article, making such arrangement void and forfeiting the charter of any corporation found guilty of being a party.

In Kansas the General Statutes of 1901, Sec. 2443, provide,— "Every person, servant, agent or employee, or any firm or corporation doing business within the State of Kansas that shall conspire or combine for the purpose of monopolizing any line of business, or for the purpose of preventing the produce of grain, seeds, live stock or hay from shipping or marketing the same without the agency of any third person, firm or corporation, shall be deemed guilty of a misdemeanor, and fined not less than $1,000, and not to exceed $5,000, for each offense."

Michigan boasts of a complete law passed in 1899 (Act 255) and amended in 1905 by a supplementary act (Act 329, p. 507). The first act is entitled "An Act to prevent trusts, monopolies and combination of capital."

The later is "An Act relative to agreements, contracts and combinations in restraint of trade or commerce."

The earlier law while complete, is on conventional lines. The later act attempts to reach further, stating that promising not to engage in business is unlawful, and that all combinations made with

[31] It is instructive that Connecticut has found it expedient to temper this rule. Judge Pardee, in the case of the Citizens Co. *v.* Bridgeport Co., 55 Conn. 16, states, "it is the duty of courts to preserve contracts inviolate rather than to destroy monopolies."

See also the opinion of BALDWIN, J., in State *v.* Orr, 68 Conn. 101.

the purpose of establishing a monopoly of any kind are declared to be against public policy and illegal and void.

Minnesota passed a law in 1893 to this effect: (Sec. 6955, of Second Minn. Stat.) "Any party to a pool, trust, agreement, combination or confederation to regulate price or output of any article, is guilty of a conspiracy, and subject to a fine of from $100 to $1,000, and imprisonment from one to ten years.

In Montana, Sec. 321, Title VII, Cap. 8, Annotated Code, reads,—

"Anyone combining or making a contract with the purpose of creating a monopoly in the manufacture, sale or transportation of any article, is punishable by imprisonment not exceeding five years, or fine not exceeding $1,000."

Any corporation which is found guilty of this offense forfeits all of its property within the state, as well as its franchise.

New York in its Stock Corporation Law of 1892 (Revised Stat. p. 1008), provides:

Sec. 7. "No stock corporation shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade, or for the prevention of competition in any necessary of life."

Again, by a statute entitled,—"An Act to prevent monopolies in articles of general necessity," there is this restriction (Laws of 1893, Chap. 716), that "Every contract or combination in the form of a trust or otherwise * * * whereby competition in the State of New York in the supply or price of an article or commodity of common use for the support of life and health, may be restrained or prevented for the purpose of advancing prices, is hereby declared illegal."

In North Carolina, according to the revised code of 1905, there seems to be simply this provision (Sec. 3739), "If any person in any way violates any of the provisions of the law against trusts and monopolies, he shall be guilty of a misdemeanor," and fined or imprisoned.

North Dakota (Chap. 53 Revised Code of 1905), possesses the most complete act that has come to the writer's notice covering this subject. The skeleton act was passed in 1890 but changed much in 1905. By it the Attorney-General is required of his own motion, to take proceedings whenever his attention is called to the violation of a law, and another provision makes it incumbent upon every corporation to file an affidavit each year showing it is not a member of a trust, pool or combination.

Ohio defines a trust (Chap. 19 a, Revised Stat. Act of 1898) as a "combination of capital, skill or acts by two or more * * * to

carry out restraints in trade, or to limit or increase the production, or to prevent competition in manufacture and sale."

In Oklahoma (Sec. 6739, Annotated Statutes of 1903), by a law passed in 1890, trusts and combinations were put under the ban. We find an unusual element in the act, which includes a combination to fix the rate of interest as a monopolistic offence.

South Carolina (by Sec. 212 of the Criminal Code of 1902) makes a combination of this character a conspiracy against trade, and fixes the punishment at a fine of from $100 to $5,000, with imprisonment for not less than six months nor more than ten years.

Texas by its constitution (Art. I, Sec. 26), decrees, "Perpetuities and monopolies are contrary to the genius of a free government and shall not be allowed."

The Virginia constitution of 1902 says (Sec. 165), "The General Assembly shall enact laws preventing all trusts, combinations and monopolies, inimical to the public welfare."

Wyoming by the constitution of 1889 followed the old track, saying (Art. I, Sec. 30),—"Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed."

Congress by its enactment of the anti-trust law on July 2, 1890, fell in line with the general sentiment. This law is entitled, "An Act to Protect Trade Against All Unlawful Restraints and Monopolies."[32]

This provides that every contract in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal, and that every person who shall monopolize, or attempt to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be guilty of a misdemeanor, punishable by a fine not exceeding $5,000, or imprisonment not exceeding one year.

While examining this law we may note that it seems the irony of fate that the next chapter in the statute book legalizes the incorporation of national trades unions, which some believe to be the extremest form of trusts.

From the foregoing laws, whether in the shape of constitutions or statutes, we may conclude that a wave of popular feeling in this country is rapidly reaching the height which in England in 1602 resulted in the decision of the Case of the Monopolies. Sometimes our court decisions have followed the popular will as shown in the laws; sometimes they have helped to form public opinion, which resulted in the later enactment of statutes. It would be far beyond the scope of this paper to mention all the cases incidental to the

[32] See 3 U. S. Compiled Stat. 1901, p. 3200.

subject. It is amusing, however, and instructive to examine some of the attacks which have been made under these anti trust laws, and to note that the chain of authorities almost invariably leads back to the notable case of *Darcy* v. *Allein.* Among them we may mention these:

People of the State of New York v. *North River Sugar Refining Co.*,[33] where it was sought to forfeit the charter of this sugar company because it had deeded its property to the trust. The court said the transfer was void because a manufacturing concern cannot enter into any arrangement which will avoid and disregard statutory permissions and restraints. By attempting so to do, the corporation violated its charter and failed in the performance of its corporate duty and must be dissolved. It is noticeable that this opinion was rendered before the enactment of the anti-trust law in New York, and on the general ground that an attempt of this character was ultra vires.

In *State of Indiana* v. *Haworth*,[34] an attempt was made to invalidate an act which provided that certain officers should procure and furnish such school books as were determined upon for the public schools. It was claimed that this resulted in a monopoly throughout the state for certain school book concerns. The court decided that the statute cannot be construed as creating a monopoly requiring that a certain class of books should be used to the exclusion of others, as there was a provision throwing open to all the competition for supplying books to the state.

Probably the most famous of all the recent monopoly cases is that of *The State of Ohio* v. *Standard Oil Co.*,[35] decided in 1892. This was in the nature of an application for quo warranto to oust the defendant from its franchises as a corporation because of wrongful combination. Judgment was given ousting defendant from the right to make a certain agreement and the power to perform it. The agreement in question was the far famed trust agreement which is set out at length in a statement by Judge Minchall, who decided (p. 159), "By this agreement—indirectly it is true but none the less effectually—the defendant is controlled and managed by the Standard Oil Trust, an association with its principal place of business in New York City, and organized for a purpose contrary to the policy of our laws. Its object was to establish a virtual monopoly of the business of producing petroleum, by which it might not merely control the production, but the price at its pleasure.

[33] 121 N. Y. 582; 9 L. R. A. 33.
[34] 122 Ind. 462; 7 L. R. A. 240.
[35] 49 Ohio St. 137; 15 L. R. A. 145.

The Kansas Supreme Court has had the question up in different shape in the case of *Kansas* v. *Phipps*,[36] where the court held that foreign insurance companies doing business in that state that combine to control and increase the rates of insurance violate the anti-trust law of Kansas.

In Missouri the case of *State ex rel. Wyatt* v. *Ashbrook*,[37] was an attack upon a department store under what was known as the anti-department store law of that state. The court said there was no such evil as would warrant an exercise of a police power by the state in the passage of the act in question; that it was not a monopoly but should be encouraged.

In Illinois in 1900 in the case of the *Inter-Ocean Publishing Co.* v. *Associated Press*,[38] the Supreme Court of Illinois held that a by-law of the Associated Press which sought to exclude from publication by any of its members, news procured from any other source than itself, was void as tending to create a monopoly in its own favor and to prevent its members from procuring news from others engaged in the same character of work.

In the case of *Whitwell* v. *Continental Tobacco Co.*,[39] an attempt was made by the plaintiff to recover treble damages under the federal anti-trust act, on the ground that the defendants refused to sell the manufactured products of the Tobacco Company to him at prices which would enable him to re-sell them to others at a profit, unless he refrained from handling chewing tobacco made by independent manufacturers. Judge SANBORN wrote the prevailing opinion of the United States Circuit Court, and held that the restriction of trade by the defendants to those purchasers who declined to deal in goods of their competitors, was not a violation of the anti-trust law, and further that the owner of goods may at all times dictate the prices at which he will sell them. The refusal to sell at a price which would enable the purchaser to re-sell at a profit, constitutes no legal injury and is not actionable. One ground upon which he bases his reasoning is that the tobacco company was not dealing in articles of prime necessity like corn or coal, nor was it rendering a public service.[40]

The case of *Strauss* v. *American Publishers' Ass'n*,[41] decided in February, 1904, was an attemut to set aside an agreement between

[36] 50 Kan. 609; 18 L. R. A. 657.

[37] Decided in 1900, 154 Mo. 375; 48 L. R. A. 265.

[38] 184 Ill. 438.

[39] 125 Fed. Rep. 454, which is reported with very full notes in 64 L. R. A. 689.

[40] Compare this with the case of King *v.* Waddington, 1 East 143. There beer was held to be a "victual" or necessity: here tobacco is a luxury.

[41] 177 N. Y. 473.

publishers of and dealers in books, whereby they contracted not to sell books of any kind to dealers who shall be suspected of selling copyrighted books at less than the net price fixed by the publishers. The court held that this contract was a violation of the New York statute against monopolies.

One of the most instructive cases is that of the *City of Atlanta* v. *Chattanooga Foundry & Pipe Works*,[42] decided in 1903 by the United States Circuit Court of Appeals,—Judges LURTON, SEVERENS and RICHARDS.[43] This was brought under the federal anti-trust law against two companies of the State of Tennessee which made cast-iron pipe and fittings. The declaration averred that the two defendants entered into an unlawful combination with certain other corporations in the same line for the purpose of restricting bidding, so that an Anniston company, which received the contract for furnishing the pipe, got $15,000 more than would have been paid but for the agreement, and this unjust profit was divided among the parties to the pool, including the two defendants. Judge LURTON wrote the opinion, holding that the action would lie under the anti-trust law.

Of Michigan cases probably the most widely known is that of *Richardson* v. *Buhl*.[44] This was a chancery suit to enjoin defendants from selling stock in a manufacturing corporation which was held by them as security. The stock was that of the Diamond Match Company, and the question of its legal integrity was the crucial question in the case. The members of the court wrote individual opinions holding the Diamond Match Company an illegal combination. Judge CHAMPLIN said (p. 660), "Such a vast combination as has been entered into is a menace to the public. Its object and direct tendency is to prevent free and fair competition, and control prices throughout the national domain. It is no answer to say that this monopoly has in fact reduced the price of matches. That policy may have been necessary to crush competition. The fact exists that it rests in the discretion of this company at any time to raise the price to an exorbitant degree."

Another Michigan case is that of *Lovejoy* v. *Michels*,[45] The defendant ordered two sets of knives from a concern which was a member of the knife makers' association, one of the principal objects of which was to keep up prices. No price was agreed upon at the time of the order, and the bills were received after the knives were used. The court held that the price fixed by the combination of

[42] 127 Fed. Rep. 23.

[43] This has been affirmed recently in the Supreme Court. Mr. JUSTICE HOLMES writing the opinion. (December 3rd, 1906.)

[44] 77 Mich. 632.

[45] 88 Mich. 15.

manufacturers was not the one which should control. Such combinations have been vicious and against public policy, and in them "the odious features of illegal monopolies are plainly apparent."

Another Michigan case on the same line is that of the *Detroit Salt Co.* v. *National Salt Co.*,[46] decided in 1903. The opinion of HOOKER, C. J., holds that no combinations in restraint of trade are lawful in Michigan today.

Hunt v. *Riverside Co-Operative Co. et al.*[47] was decided in 1905; this was an attempt of plumbers to fix local prices, and in the opinion of Judge CARPENTER it is announced that "the mere fact that the monopoly created is not a complete and perfect monopoly, is no defense." We find also the case of the *White Star Line* v. *Star Line of Steamers*,[48] decided in November, 1905, in which the complainant and the defendants, with three other steamboat lines, enter into a pool for the purpose of controlling water traffic between Detroit and nearby points. Judge McAlvay says that the purpose of the agreement "was to monopolize and control traffic" and is unlawful and invalid as against the provisions of the Sherman Act, known as the federal anti-trust law.

Taking these statutes and decisions together we may conclude that today the American test of the lawfulness or unlawfulness of the combinations of persons or forces (as being of a monopolistic character) is whether or not they tend to control prices. That a concern lowers prices is no defense or shield. As Mr. Pingrey says in his work on EXTRAORDINARY INDUSTRIAL AND INTERSTATE CONTRACTS (Sec. 321), "It is enough to know that the natural tendency of such contracts is injurious."

It is somewhat difficult to reconcile some "trade-union" decisions with the rule of law governing combinations, but it seems fair to assume that the law will soon be shaped by American intelligence so that it will provide for the proper control of these bodies. Agreements or combinations which undertake the absolute control of the labor market should be as unlawful as any trust or monopolies: agreements which provide for a living wage should be legalized, both for labor and capital. The line of demarcation is hard to find, but we are nearing it with each swing of the pendulum.

IV.

The last problem suggested in this connection is with relation to "holding companies." This new kind of questionable corporate

[46] 134 Mich. 103.
[47] 140 Mich. 538, 12 D. L. N. 265.
[48] 141 Mich. 604, 12 D. L. N. 586.

character is prominent now because of the recent move of some of our monopolistic combinations in transferring the stock of their subsidiary companies to English corporations. The question of the hour is how to meet this method.

Mr. Beale in his work on FOREIGN CORPORATIONS (Sec. 785), lists seven states which permit their corporations to acquire stock in corporations of other states. In most instances this power is limited so as to prevent the encouragement of monopoly, but the plan of transatlantic holding companies must be taken from the other end. We cannot control the power of the holding corporations. Can we attain our purpose by restricting the amount of stock in a domestic corporation which may be held by foreign capital? The District of Columbia has a statute (Compiled Stat. of 1894, p. 43, Sec. 2) providing that corporations having more than twenty per cent of stock owned by aliens are prohibited from holding real estate in the district. Shall it be our policy to adopt a similar method?

Judge Noyes in his book on INTERCORPORATE RELATIONS (Sec. 286, p. 416) says "the holding by foreign corporations of the stock of domestic companies for the purpose of destroying competition, is inimical to public policy and consequently void, but in such a case the unlawful purpose is the essential objection rather than the foreign domicile of the corporation." If a transatlantic company undertakes to do something not permitted by law for an American Company, is not its purpose avowedly against the public policy of this country and are not its acts here void? Surely our courts have power to interfere, on a proper showing.

This last development seems likely to become a feature of international law. A leading French authority, Mons. A. Pillet, in his book on the PRINCIPLES OF PRIVATE INTERNATIONAL LAW,[49] lays down the general rule that a stranger domiciled in France, or other foreign country, should have no greater rights than he has in his own country. If we may accept this as true, the stranger corporation formed under the laws of England for the purpose of controlling stock in American corporations, which could not be so controlled by an American corporation, is undertaking a business which is contrary to our laws and which can be restrained by our courts.

It has been the boast of the English press that trusts were unknown in Great Britain; therefore we should look for little sympathy in our anti-trust agitation if it were not for a new development in British business circles. This is a trust or combination of the soap manufacturers against which the London *Spectator* has been wielding the cudgels in its most approved fashion. If this trust becomes

[49] "Principes de Droit International Privé," par A. Pillet, Sec. 220, etc.

popularly obnoxious, or if others are formed, we may find it possible to make an arrangement with England, by treaty or otherwise, providing that no corporation organized in one country shall stand as a holding company for the shares of corporations organized in the other country.

Is it not possible that this idea may soon spread? Why should it not be taken up at the next Hague conference, as it is a menace threatening the internal peace of any progressive industrial nation?

To summarize may we not say that some of the results of "The Case of the Monopolies" have been (a) the clear establishment of the idea that sole control of a product is against public policy and consequently against fundamental law,—(b) the giving a firm base and good outline for our States to start from in their law-making and their courts. One of its suggestions, too, that we need today is that the monopolistic idea is against the grain of English thought, and that therefore we should have little real trouble in framing an understanding with all English speaking lands as to an interchange of corporate restriction.

SIDNEY T. MILLER.

DETROIT, MICHIGAN.